

REMARKS

Reconsideration and allowance of the subject application is solicited.

We first thank the Examiner for courtesies extended to applicant's representative during the telephone interview on February 16, 2010. The substance of the interview is summarized here.

The specification and claims 1 and 2 are amended above. The specification is amended to include information regarding the deposit of the claimed strain in an accepted depository, and to specify the identifying information pursuant to 37 CFR 1.809(d). Claim 1 is amended to specify that the plasmid-free E. coli strain is the strain deposited in the German Collection for Microorganisms (DSMZ), and to cancel the language stating that the claimed strain is identical in its genome to DSM 6601 Escherichia coli strain containing plasmids pMut1 and pMut2. Claim 2 is amended to cancel the language "substantially simultaneously" as objected to by the Examiner. No new matter is introduced by any of these amendments, and entry and full consideration on the merits are respectfully requested.

During the telephone interview, the Examiner suggested that the outstanding art rejections could be overcome by depositing the claimed strain and amending claim 1 as above. The applicant has deposited the strain in the German Collection for Microorganisms (DSMZ), under the terms of the Budapest Treaty. Attached is a copy of the deposit receipt. (Note: When the deposit was made, the applicant identified the claimed strain by reference PZ 807.)

Regarding the deposit, the Examiner requested a statement meeting the requirements of 37 CFR 1803-1.809. To that end, the applicant avers through its representative signing below that the plasmid-free E. coli strain deposited in the German Collection for Microorganisms (DSMZ), strain is the same strain as invented and described in the instant application and in PCT/EP2004/006886, and all restrictions imposed by the depositor on the availability to the public of the deposited materials will be irrevocably removed upon the granting of a patent.

In the September 1, 2009 Office Action, Claims 2-6 are rejected under 35 U.S.C. §112, first paragraph, as adding new matter not supported by the application. In

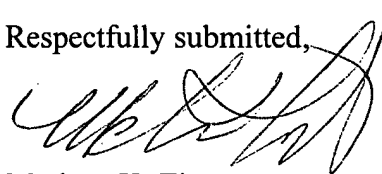
particular, the Examiner has objected to the language in claim 2 "substantially simultaneously" introducing the altered pMut1 and pMut2 plasmids. In response, and as discussed during the telephone interview, we have amended claim 2 to cancel that language. Withdrawal of this objection is requested.

Claims 1-6 are rejected under 35 U.S.C. §112, first paragraph, as allegedly indefinite. The Examiner requested clarification regarding whether the genomes of the DSM 6601 strain and the plasmid-free strain as claimed are identical. In response, and as discussed during the telephone interview, we have amended claim 1 to cancel that language, and have included the language regarding the deposit of the strain. Withdrawal of this objection is requested.

Claim 1 is rejected under 35 U.S.C. §103(a) as obvious over Uraji et al. in view of Blum-Oehler et al (WO 99/44134, cited in ISR) in view of Trevors et al. Claims 2-6 are rejected under 35 U.S.C. §103(a) as obvious over Uraji et al. in view of Blum-Oehler et al (WO 99/44134, cited in ISR) in view of Trevors et al., and in view of Alexeyev et al. In response, and as discussed during the telephone interview, we have amended claim 1 to specify the deposited strain. Withdrawal of these rejections is believed to be in order.

In summary, all of the Examiner's outstanding rejections and objections have been addressed, and the application is believed to be in allowable form. Notice to that effect is earnestly solicited. If the Examiner has any questions or would like to make suggestions as to claim language, she is encouraged to contact Marlana K. Titus at (301) 977-7227.

Respectfully submitted,



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From: 02330977697 Page: 4/7 Date: 24.02.2010 15:25:08

**Duplikat**BUDAPEST TREATY ON THE INTERNATIONAL  
RECOGNITION OF THE DEPOSIT OF MICROORGANISMS  
FOR THE PURPOSES OF PATENT PROCEDURE**DSMZ**Deutsche Sammlung von  
Mikroorganismen und  
Zellkulturen GmbH

INTERNATIONAL FORM

DSMZ- Deutsche Sammlung von Mikroorganismen  
und Zellkulturen GmbH

V. Weh 22.02.2010

Pharma-Zentrale GmbH

Loerfeldstr. 20

58313 Herdecke

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT  
Issued pursuant to Rule 7.1 by the  
INTERNATIONAL DEPOSITARY AUTHORITY  
identified at the bottom of this page

<b>I. IDENTIFICATION OF THE MICROORGANISM</b>	
Identification reference given by the DEPOSITOR:  PZ 807	Accession number given by the INTERNATIONAL DEPOSITARY AUTHORITY:  DSM 16700
<b>II. SCIENTIFIC DESCRIPTION AND/OR PROPOSED TAXONOMIC DESIGNATION</b>	
The microorganism identified under I. above was accompanied by:  <input checked="" type="checkbox"/> a scientific description <input checked="" type="checkbox"/> a proposed taxonomic designation (Mark with a cross where applicable).	
<b>III. RECEIPT AND ACCEPTANCE</b>	
This International Depositary Authority accepts the microorganism identified under I above, which was received by it on 2004-09-10 (Date of the original deposit).	
<b>IV. RECEIPT OF REQUEST FOR CONVERSION</b>	
The microorganism identified under I above was received by this International Depositary Authority on _____ (date of original deposit) and a request to convert the original deposit to a deposit under the Budapest Treaty was received by it on _____ (date of receipt of request for conversion).	
<b>V. INTERNATIONAL DEPOSITARY AUTHORITY</b>	
Name: DSMZ-DEUTSCHE SAMMLUNG VON MIKROORGANISMEN UND ZELLKULTUREN GmbH  Address: Marchfelder Weg 1b D-58124 Herdecke	Signature(s) of person(s) having the power to represent the International Depositary Authority or of authorized official(s):  V. Weh  Date: 2004-09-14

Where Rule 6.4 (d) applies, such date is the date on which the status of international depositary authority was acquired.

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**Duplikat**

**BUDAPEST TREATY ON THE INTERNATIONAL  
RECOGNITION OF THE DEPOSIT OF MICROORGANISMS  
FOR THE PURPOSES OF PATENT PROCEDURE**

**DSMZ**  
Deutsche Sammlung von  
Mikroorganismen und  
Zellkulturen GmbH

INTERNATIONAL FORM

DSMZ- Deutsche Sammlung von Mikroorganismen  
und Zellkulturen GmbH

*V. Weh* 22.02.2010

Pharma-Zentrale GmbH

Loerfeldstr. 20

58313 Herdecke

**VIABILITY STATEMENT**  
issued pursuant to Rule 10.2 by the  
INTERNATIONAL DEPOSITARY AUTHORITY  
identified at the bottom of this page

<b>I. DEPOSITOR</b>	<b>II. IDENTIFICATION OF THE MICROORGANISM</b>
Name: Pharma-Zentrale GmbH Address: Loerfeldstr. 20 58313 Herdecke	Accession number given by the INTERNATIONAL DEPOSITARY AUTHORITY:  DSM 16700  Date of the deposit or the transfer:  2004-09-10
<b>III. VIABILITY STATEMENT</b>	
The viability of the microorganism identified under II above was tested on 2004-09-10 On that date, the said microorganism was  <input checked="" type="checkbox"/> viable <input type="checkbox"/> no longer viable	
<b>IV. CONDITIONS UNDER WHICH THE VIABILITY TEST HAS BEEN PERFORMED</b>	
<b>V. INTERNATIONAL DEPOSITARY AUTHORITY</b>	
Name: DSMZ-DEUTSCHE SAMMLUNG VON MICROORGANISMEN UND ZELLKULTUREN GmbH  Address: Mascheroder Weg 1b D-38124 Braunschweig	Signature(s) of person(s) having the power to represent the International Depositary Authority or of authorized official(s):  <i>V. Weh</i>  Date: 2004-09-14

Indicate the date of original deposit or, where a new deposit or a transfer has been made, the most recent relevant date (date of the new deposit or date of the transfer).  
 In the cases referred to in Rule 10.2(a) (ii) and (iii), refer to the most recent viability test.  
 Mark with a cross the applicable box.  
 Fill in if the information has been requested and if the results of the test were negative.

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